

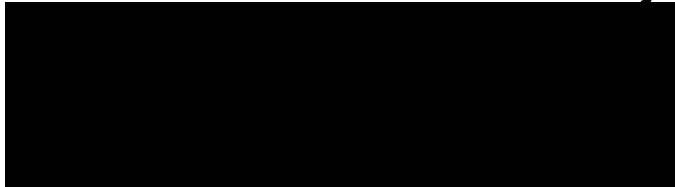
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U.S. Citizenship
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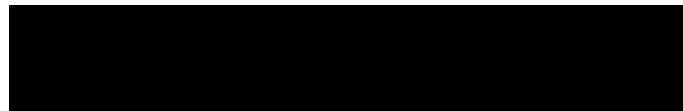


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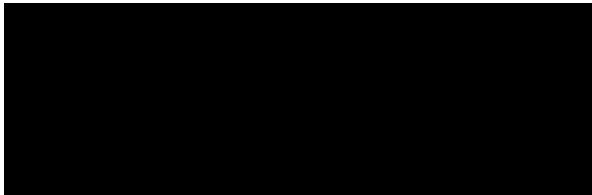
FILE: WAC 02 262 54438 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a computer services company that seeks to employ the beneficiary as a network systems analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a network systems analyst. The petitioner indicated that the proffered position required a baccalaureate degree or its equivalent. The petitioner further stated that the beneficiary had the equivalent of a baccalaureate degree in computer science based on his internship with the petitioner, his studies at Aberdeen College, Aberdeen, Scotland, and his associate's degree in information technology from Platt College, Newport Beach, California.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the educational equivalency document provided by the petitioner established that the beneficiary had more than the 120 credit hours required for a baccalaureate degree. Counsel further states that the beneficiary attended Aberdeen College for four years, and that the director erroneously stated in his decision that the beneficiary had only attended Aberdeen College for two years.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a specific specialty, namely, computer science. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel submitted an evaluation from the Washington Evaluation Service, Washington, D.C., a company that specializes in evaluating academic credentials. Dr. Terry Erb, the evaluator, stated that the beneficiary possessed the equivalent of a bachelor of science degree in information technology from an accredited U.S. college or university based on his combined academic studies at Platt College and his four years of study at Aberdeen College. In its response to the director's request for further evidence, the petitioner submitted a

second evaluation from Dr. Erb to provide a fuller explanation of how the evaluator reached his educational equivalency determination. Dr. Erb stated that the beneficiary had matriculated at Aberdeen College in 1995 and that his completion of the National Certificate Module was academically equivalent to two years of study at the undergraduate level at an accredited U.S. university toward a degree in hospitality management. Dr. Erb further stated that Platt College had given the beneficiary 28 credit hours for previous studies at Aberdeen College toward his associate degree in information technology. Dr. Erb then stated that the remainder of the beneficiary's studies at Aberdeen College was equivalent to one year of study or 30 credits towards a bachelor's degree as awarded by an accredited U.S. university. In sum, Dr. Erb determined that the beneficiary's combined educational studies at Aberdeen College and Platt College totaled 126 credits that were more than the required 120 credit hours required for a U.S. bachelor's degree. On appeal, counsel reiterates Dr. Erb's conclusions with regard to the beneficiary's hours of college credits.

Upon review of the record, the petitioner submitted the following evidence with regard to the beneficiary's studies in Scotland and in the United States:

Two letters from Marilyn M. Paterson, Team Leader, Hospitality, Aberdeen College, dated September 3, 2002. The first letter stated that the beneficiary attended courses at Aberdeen College from 1997 to 1999. The second letter broke down the coursework undertaken by the beneficiary from 1997 to 1999 in the hospitality department.

A document entitled the Scottish Certificate of Education that outlined coursework undertaken by the beneficiary at Cults Academy, also in Aberdeen, Scotland. The courses listed were biology, chemistry, craft and design, English, French, geography, mathematics, and physical education. A second Scottish Certificate of Education document listed a course in craft and design that the beneficiary took at the Cults Academy in 1996.

A document from the Scottish Vocational Education Council that lists two courses, using a keyboard, and communication 3, that the beneficiary took in 1995, and also three courses taken by him in 1996 in text processing, introduction to word processing, and introduction to literature. This document does not state where the courses were taken, but does note that the courses are part of the SCOTEV National Certificate Module.

A letter from the Scottish Qualifications Authority, Glasgow, Scotland dated September 23, 2002 that provided the beneficiary's Scottish Qualifications Certificate (SQC). According to the Authority, the SQC reviews all the qualifications that the beneficiary achieved in education and training at school, college, or in the workplace. This document does not specifically identify the institutions in which any coursework was taken, but it does list the coursework taken at Cults Academy, Aberdeen College, and the vocational classes listed above.

A transcript of the beneficiary's coursework at Platt College. This transcript shows that the beneficiary did receive credit for some courses taken in Scotland; however, it is not clear how many credit hours were received for the Scottish courses listed.

Upon a review of these documents, it appears that the beneficiary attended general studies classes at Cults Academy in 1995 and 1996, which does not appear to be a college or university, and he attended many classes in Aberdeen College in the field of hospitality from 1997 to 1999. While the beneficiary may have matriculated at

Aberdeen College in 1995, the record is devoid of any documentation to this effect. Thus, the beneficiary appears to have some two years of coursework at a university level in a field distinct from the required bachelor's degree in computer science, or in information technology. It is not clear from the record how Dr. Erb determined that Platt College had given the beneficiary 28 hours of credit; however, if this were the case, the combination of these 28 hours plus the hours received by the beneficiary after his one year program of computer studies would be the educational credentials to be examined with regard to equivalency to a U.S. baccalaureate degree in information technology or computer studies. Without more persuasive evidence, the combination of the beneficiary's studies at a university level in Scotland in hospitality and his associate's degree in information technology are not found to be the equivalent of a baccalaureate degree in computer science from an accredited U.S. educational institution.

With regard to counsel's assertion that the beneficiary had acquired more hours of credit than the 120 hours required for a U.S. baccalaureate degree, the number of course credits in any academic field that the beneficiary has received is not dispositive of his qualifications to perform the duties of the position. Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. In his evaluation, Dr. Erb provided no explanation as to how college coursework in hospitality could be found to be the equivalent of college level coursework in computer studies or information technology. The petitioner has to establish that the beneficiary has sufficient academic credentials or the equivalent in training and work experience in a specific specialty related to the proffered position.

In addition, when CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record is devoid of any evidence that establishes any of the regulatory criteria outlined above. The beneficiary's membership in American Software Contractor's Guild is not seen as sufficient evidence to satisfy the regulatory criterion with regard to membership in a recognized United States association or society in the specialty occupation. As the petitioner has not attempted to establish the beneficiary's qualifications under any of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.